

ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR07-500

WILLIAM DAVID WATSON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered December 10, 2008

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CR-2005-60-1]

HONORABLE GARY R. COTTRELL,
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

This case is once more before us. It was previously submitted to this court as a non-merit appeal. However, after evaluating it in accordance with the direction promulgated in *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, we concluded that an argument on the merits would not be wholly frivolous. In an unpublished opinion dated January 16, 2008, we ordered that it be rebriefed in merit format.

On September 7, 2005, William David Watson pleaded guilty to non-support, and he received a six-year suspended imposition of sentence. He was ordered to make payments to retire his \$9,000 child-support arrearage. Subsequently, the State petitioned to revoke his suspended sentence due to his failure to make payments in accordance with the schedule. After a hearing, Watson's suspended imposition of sentence was revoked and he was sentenced to forty-eight months in the Arkansas Department of Correction. On appeal,

Watson argues that there was insufficient evidence presented at the hearing to prove that he inexcusably violated a condition of his probation. We affirm.

In revocation proceedings, the State bears the burden of proving by a preponderance of the evidence that the defendant has inexcusably violated a condition of his suspension. *Jones v. State*, 52 Ark. App. 179, 916 S.W.2d 766 (1996). Where the sufficiency of the evidence is challenged on appeal from an order of revocation, we will not reverse the trial court's decision unless its findings are clearly against the preponderance of the evidence. *Id.* In making our review, we defer to the superior position of the trial court to determine questions of credibility and the weight to be given to the evidence. *Id.*

Watson admitted at the hearing, and reiterates on appeal, that he was not paying his child support and restitution “as ordered.” However, he contends that evidence is not sufficient to support a conclusion that his failure to pay was “inexcusable.” He cites Arkansas Code Annotated section 5-4-205(f)(3) (Repl. 2006), for the proposition that there are several factors that must be “taken into consideration by the trial court” before revoking a suspended sentence, such as his employment status, earning ability, financial resources, willfulness of the failure to pay, and any other special circumstances that may have a bearing on his ability to pay. He argues that he testified that he had been unemployed, was limited in his earning ability because of the suspension of his professional licenses, and that he was only able to work at odd jobs earning \$8.00 per hour. He asserts that this evidence was un rebutted by the State, so the evidence was insufficient to support a finding that his violation was inexcusable. We disagree.

The revocation proceeding was not, as they say, Watson's "first rodeo." A revocation petition was filed on November 8, 2005, and withdrawn on May 10, 2006, after he paid \$868 toward his restitution. On June 22, 2006, a petition to show cause was filed because of Watson's continued failure to pay restitution and make child support payments. On October 25, 2006, he pleaded guilty to a charge of contempt and served a weekend in the Crawford County Detention Center and ten-days' community service. He also agreed to make an immediate payment of \$220 and forfeit his \$500 cash bond to be applied toward his restitution. All of these payments were duly recorded on the ledger sheet that the State introduced into evidence. Significantly, these payments were the only payments that Watson has made in this case. It is apparent from this record that Watson was able to make substantial payments when his liberty was directly threatened. Accordingly, this evidence indicates that Watson's failure to make his payments was a function of his motivation, not his ability. We hold that it was not clearly against the preponderance of the evidence that Watson's failure to pay was inexcusable.

Affirmed.

ROBBINS and BAKER, JJ., agree.